

Honorable Daniel K. Inouye, Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Over the years serious damage to our foreign intelligence effort has resulted from the unauthorized disclosure of intelligence sources and methods. A spate of recent public disclosures and attempted disclosures of sensitive intelligence information by former Government officials have caused me grave concern and highlight the necessity for legislation to provide criminal penalties for the unauthorized disclosure of intelligence sources and methods.

The fundamental problem facing the Intelligence Community and the Department of Justice in efforts to properly safeguard our nation's intelligence secrets and to maintain the integrity of the intelligence process is the inability in most instances to prosecute a case involving unauthorized disclosure of intelligence information. This is so because the evidence necessary to establish elements of the offense usually requires the revelation in open court of additional sensitive information or at the very least the further dissemination and confirmation of the information which is the subject of the prosecution. The result is that under current law an individual who, because of his special relationship with the Government, comes into possession of intelligence information and subsequently discloses that information publicly is essentially immune from prosecution.

At present the sole means by which the Government may prevent initial or further publication of such information is to seek an injunction provided that the individual has signed a secrecy agreement with the Government, such as in the so-called Marchetti case. In the absence of statutory authority, even this remedy is uncertain, in that the Marchetti case is the sole precedent. Further, it has proven difficult to learn of planned publications that would disclose intelligence information in time to seek injunctive relief. Having a statute imposing criminal penalties for the unauthorized disclosure of intelligence sources and methods would ease this burden through its deterrent effect.

Two recent cases emphasize the inadequacies of existing law in protecting against the disclosure of intelligence information. It is particularly disturbing, for example, in the case of Edwin G. Moore, a former CIA employee who allegedly attempted to pass classified intelligence information to a foreign government, that prosecution will be hampered by the need to disclose sensitive intelligence information in order to prosecute. It is ironic in this case that while the offender was apprehended before he succeeded in disclosing intelligence information the Government cannot prosecute him without disclosing some of that information and thereby doing the very damage it seeks to prevent.

25X1

Unfortunately, these two examples are not isolated instances. I am being confronted regularly with damaging leaks from within the Government--leaks which even threaten the lives of vulnerable human subjects.

The President, in a message to Congress of 18 February 1976, included a legislative proposal that would establish criminal penalties for the unauthorized disclosure of intelligence sources and methods. This proposal was subsequently introduced as H.R. 12006, but no similar legislation was introduced in the Senate. I would strongly urge that such legislation be considered promptly in the 95th Congress. The Agency and the Department of Justice considered this problem exhaustively prior to submission of the President's 1976 legislative proposal and the Attorney General agrees that there is need for legislation of this kind. This bill provides safeguards to protect our American standards of freedom of information and protection of individual rights while reducing the problems outlined above so as to enable the Government to prosecute cases without risking undue public disclosure of sensitive information.

What those who leak classified information and those who publish it may not fully realize is that in addition to the risks to national security which their actions involve, the disclosures can also result in sizeable monetary costs to the U.S. Government. Such costs are oftentimes difficult to measure, but the fact remains that disclosure of the manner in which certain information is acquired stimulates and enables the target country to take new measures to insure against further U.S. access to data of the type disclosed.

Public disclosure of classified intelligence gives the USSR and other foreign powers keen insight into the capabilities and limitations of our intelligence system. It also undermines the attitude toward security at all levels of Government. If disclosures of our most guarded secrets and our most sensitive sources and methods of collecting intelligence continue to make their appearance in the news media, the end result is a loss of faith in the system designed to protect such matters. It threatens the very safety and welfare of those who may be providing us intelligence at a substantial personal risk.

It is a tragedy to see articles in the news media quoting our intelligence reports verbatim without regard to possible damage to sensitive collection programs. The inevitable result of such disclosures can only mean a sharp curtailment of the effectiveness, if not the disappearance of some of our most important intelligence sources, human as well as technical.

I sincerely believe that passage of a bill like H.R. 12006 would be a strong deterrent to exposure of intelligence sources and methods by persons who have such information by virtue of their relationship with the U.S. Government. I would hope that this matter will be the subject of further discussions between the Director of Central Intelligence and your Committee as the 95th Congress begins its work.

Sincerely,

George Bush
Director

ROUTING AND RECORD SHEET

77-3123

SUBJECT: (Optional)				
FROM: Office of Legislative Counsel 7D35 Headquarters		EXTENSION	NO.	
			DATE	
TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	<p>COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)</p> <p>The attached letters to Senator Inouye and Representative Nedzi, for your signature, represent a complete and forceful discussion of the reasons and need for legislation to protect intelligence sources and methods. The letters were drafted in conjunction with OGC and the Office of Security, and were concurred in by the IC Staff and the A/DDCI.</p> <p>As indicated in Hank Knoche's note to you of 28 December 1976, recent cases involving disclosure of sensitive intelligence information afford strong support for the position outlined in the letters. Recent conversations with members in both the House and Senate have convinced me that the time is ripe to present our case to our oversight committees without delay.</p> <div style="border: 1px solid black; width: 200px; height: 50px; margin: 10px auto;"></div> <p style="text-align: center;">Legislative Counsel</p>
	RECEIVED	FORWARDED		
1. DCI				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

STAT